

Interstate Arrangement for the Determination and Payment of Interstate Claims—An Experiment in Interstate Cooperation*

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The recent publicity given to individuals who claim unemployment compensation after having left the State in which their rights were earned to move to resort areas, such as Florida or California, has tended to ignore and obscure very real questions connected with the interstate payment of unemployment compensation.^{1a} Upon what basis can an individual who leaves a State file a claim for compensation under the law of such State? How is such claim to be transmitted and determined?

Whether or not an individual is entitled to unemployment compensation requires a quasi-judicial determination by the unemployment compensation agency. Collecting the facts which form the basis of such a determination is often difficult when the individual has left the State under whose law his rights are determined. The necessities of the situation have called forth cooperative efforts on the part of all the States to devise procedures and methods calculated to assure the prompt payment of interstate benefits when due. As may be expected, these procedures and methods have been the subject of revision and experimentation. This article is concerned primarily with the latest approach to the payment of interstate benefits, the Interstate Arrangement for the Determination and Payment of Interstate Claims.

* The opinions expressed herein are those of the author and are not intended to reflect the official views of the Federal Security Agency or of the Social Security Administration.

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^{1a} It should be noted, in passing, that these transient workers are not necessarily vacationing. During the winter season the milder climates offer much greater opportunity for employment, in many fields, than exist in the North. The Winter, for example, is the boom period for construction work in Florida, and a claimant who moves to Florida at that time may merely be going where work in his occupation is available. Moreover, as pointed out below, in order to be entitled to unemployment compensation, interstate claimants must meet all the eligibility requirements and are subject to all the disqualification provisions of the State law involved.

Of the 2,785,159 claims filed for unemployment compensation under the Ohio law in the 18 month period beginning April 1, 1947, and ending September 30, 1948, 26,288, or a little less than 1% of all claims, were filed by interstate claimants (1,588 of these interstate claims originated in Florida and 3,930 in California). The nation-wide proportion of interstate claims for the same period averaged about 4%. In the first quarter of 1948, for example, of 10,771,423 payments of unemployment compensation 497,213, or 4.6%, were interstate payments.

At the present time, 18 State unemployment compensation agencies¹ have entered into the Interstate Arrangement for the Determination and Payment of Interstate Claims.² As its name implies, the Arrangement is designed to establish procedures for the payment of unemployment compensation to claimants who have left the State where they earned the wages on which their benefits are based.³ The Arrangement, which is still in an experimental stage, exists side by side with the older Interstate Benefit Payment Plan, and payments of unemployment compensation to interstate claimants are now made under both the Arrangement and the plan. Prior to a detailed discussion of the Arrangement, a brief description of the Interstate Benefit Payment Plan, which it was designed to supersede, will be helpful to an understanding of the forces which impelled the creation and adoption of the Arrangement.

I. THE INTERSTATE BENEFIT PAYMENT PLAN⁴

The Social Security Act⁵ created a "federal-state" system of unemployment compensation. Under the inducement of the Federal act, it was contemplated that the States would, as they did, enact

¹ As of March 1, 1949, the following States had entered into the Arrangement: Arizona, Arkansas, California, Georgia, Territory of Hawaii, Idaho, Louisiana, Maine, Minnesota, Montana, New Mexico, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, and Wisconsin. The remaining State agencies are either not desirous of entering into the Arrangement, or have concluded that their laws do not permit their subscribing to it. Ohio has not subscribed to the Arrangement.

² While the writer has herein considered only this Arrangement and the Interstate Benefit Payment Plan, there are other interstate agreements, some of which are for the protection of claimants and others of which are for the convenience of employers. For example, there is a wage-combining agreement under which a claimant who has earned wages in more than one State but has not earned enough wages in any State to be eligible for benefits may, by a combination of his wage credits, receive benefits (see I CCH, U.I.Serv. Treatise, §2050). There is also a reciprocal coverage arrangement under which an employer whose employees work in more than one State may elect to cover such employees under the law of one of such States and file only a single return and make his contributions to only one State (see I CCH, U.I.Serv. Treatise, §§ 1384 et seq.).

³ Hereafter referred to as an interstate claimant. An individual who files his claim for benefits in the State in which his wages were earned is hereafter referred to as an intrastate claimant.

⁴ The terms of the Interstate Benefit Payment Plan are set out in full in Section 2050.01, of the Treatise in I, CCH (Unemployment Insurance Service). All States, including the 18 which have subscribed to the Arrangement, are participating in the Interstate Benefit Payment Plan. The States which have adopted the Arrangement are thus paying benefits under the Plan, to claimants from States which have not adopted the Arrangement, as well as under the Arrangement.

⁵ 49 STAT. 626 (1935), 46 U.S.C. § 88a (1946); 53 STAT. 1378 (1939, 42 U.S.C. § 502, 503 (1946).

and administer their own unemployment compensation laws.⁶ Generally, these State laws provide that an unemployed individual is entitled to receive payments of unemployment compensation for a limited period if he has filed a claim for such compensation, has earned sufficient wages in employment subject to the law, has met other conditions of eligibility, and is not disqualified for statutorily prescribed conduct. The amount of benefits, subject to provisions on minimum and maximum payments, is directly related to the amount of wages credited to the individual.

The Interstate Benefit Payment Plan was designed to ameliorate a difficulty inherent in the treatment by 51 separate unemployment compensation systems of a problem essentially national in scope. Early in the program⁷ it was apparent that some standardized procedure must be adopted to insure payment of benefits to individuals who become non-residents of the State where their wage credits were earned. To insist that a worker apply in person to a local office in his home State would obviously impose an oppressive and expensive burden on a claimant who has moved to another State and is seeking employment there.^{7a}

Recognizing this need, the Interstate Benefit Payment Plan was devised to provide that a claimant may file a claim for benefits

⁶ *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937). For a brief discussion of the role of the Social Security Act in securing the enactment of State unemployment compensation laws, see Witte, *Development of Unemployment Compensation*, 55 YALE L.J. 21, 32 *et seq.*

⁷ In May 1938, a plan adopted by the Interstate Benefit Payment Committee of the Interstate Conference of Employment Security Agencies was distributed for acceptance and subsequently adopted by all States.

^{7a} A contrary result would, in effect, penalize the worker who left the State in which his wage credits were earned and would result in restricting the mobility of labor. The unemployment compensation law was never intended to be used for such a purpose. For example, Section 1345-19, Ohio General Code, which authorizes the Administrator of the Bureau of Unemployment Compensation to enter into the reciprocal arrangements with government agencies is evidence that the legislature intended that workers who left the State of Ohio might, nevertheless, be entitled to benefits under the Ohio law. *Cf. Brown-Brockmeyer Co. v. Holmes*, 84 N.E. 2d 290 (Ohio 1949), where the Montgomery County Court of Appeals held that the term "residence" as used in section 1346-6-e(3), which provides that an individual shall not be disqualified for refusing work located at an unreasonable distance from his residence, refers to the person's established residence at the time the work is offered. Therefore, an individual who left his job in Ohio to move to California where he established a residence was held not to be disqualified for benefits during his subsequent unemployment for refusing re-employment offered by his former Ohio employer. The holding in this case implicitly recognizes that a State unemployment compensation law is not intended to provide benefits only for those individuals who remain in the State, and results in encouraging workers to move to other areas where work may be available without fear of losing their rights to unemployment compensation under the Ohio law.

in a State other than that in which his wages were earned and have his right to benefits determined under the law of the latter State. Under this procedure, the State receiving the claim (the agent State) forwards it for determination and payment to the State in which the claimant's wages were earned, the paying (liable) State. Provisions for appeals and hearings are included in the plan, which is in the form of interstate compacts,⁸ pledging the adherence of all participating State agencies.

Insofar as the plan furnished a positive procedure it was successful, as evidenced by the number of claims handled under it. "From 4 to 10 per cent of the benefits paid each quarter since 1940 have been paid to interstate claimants. In some States the percentage of weeks compensated to interstate claimants has run as high as 40 per cent of the total payments."⁹

The plan, however, suffers from several congenital defects. First, by reason of the diversity of the various State laws, it often entails the procurement of information for the liable State which is not necessary in the agent State. This tends to encourage correspondence and consequent delay.¹⁰ Second, in practice, the administration of interstate claims has not been as expeditious as that of intrastate claims.

Various proposals have been offered in an attempt to reduce the correspondence and the delay in the payment of interstate benefits which have, so far, attended the plan. Essentially, such proposals were intended to obviate the necessity for special treatment of interstate claimants and were based on the application, to a greater or less degree, of an agent State's law to an interstate claim. The proposal now embodied in the Interstate Arrangement was finally selected¹¹ and the Arrangement went into effect in January 1947 after it had been accepted by 7 State agencies.

⁸ Whether Congressional consent has been given for such agreements is discussed at page 140 et seq.

⁹ *Issues in Social Security, A Report to the Committee on Ways and Means*, 79th Cong., 1st Sess. (1946) p. 715. For a further discussion of the Interstate Benefit Payment Plan and its operations see: Geddes and Russell, *Interstate Workers Under Unemployment Compensation in New England*, 28 AM. LAB. LEG. REV. 59; Note, *The Interstate Problems of the Unemployment Compensation Program*, 36 ILL. L. REV. 862 (1942).

¹⁰ Considerable difficulty has been encountered in the preparation of claim forms, but this aspect seems to be well underway to solution with the adoption of uniform claim forms which are finding rather general acceptance. *Issues in Social Security*, *Supra* note 9.

¹¹ The other significant proposals which were rejected may be summarized in broad terms as follows: 1. The agent State would make a recommendation as to whether or not the claimant is available and has met the other eligibility requirements (presumably reporting and registration) set forth in its law. If the agent State recommends payment of benefits on the basis of its law, the liable State would be expected to base its determination on the recommendation.

II. INTERSTATE ARRANGEMENT FOR THE DETERMINATION AND PAYMENT OF INTERSTATE CLAIMS

The essence of the Interstate Arrangement is contained in the following quotation from Article III:

C. Payment of Benefits; Liability, Conditions

Benefits shall be paid to an interstate claimant from the Unemployment Fund of the paying State in the same manner and under the same conditions as if such claimant were eligible to receive benefits under the unemployment compensation law of such State, *except* that the amount of qualifying wage credits required, his weekly rate or its equivalent, his maximum benefit amount, his partial earnings limit, the seasonal provisions applicable to him, the duration and the period during which benefits are payable to him, the length of his waiting period, and if the claim is the first one in his benefit year, whether the claimant is otherwise currently eligible for benefits and whether he is disqualified including the period of any disqualification, shall be governed by the provisions of the unemployment compensation law of the liable State and shall be determined by the State agency administering the unemployment compensation law of the liable State. Provision[s] of the unemployment compensation law of the paying State shall otherwise apply to an interstate claimant.¹²

Stated simply, the Arrangement proposes that when a person who is entitled to unemployment compensation under the law of State A, files a claim in State B, the latter State will forward the claim to State A for an initial determination of the amount and duration of benefits and of the claimant's right to benefits, if this determination has not already been made. Thereafter, State B will treat claims for weekly benefits as though they were intrastate claims *subject to the eligibility and disqualification provisions of its*

If the agent State recommends denial of payment, the liable State would make a determination under its own law on the basis of the facts obtained by the agent State. 2. The liable State would transfer all wage credits to the State where claimant files his initial claim; the agent State would make the initial determination under its benefit formula applying its own eligibility and disqualification provisions. The liable State would reimburse the agent State for all benefits paid. Proposal 1, it may be noted, would still include the elements of the Interstate Benefit Payment Plan which have been criticized; i.e., the handling of intrastate and interstate claims on a different basis and the necessity for the forwarding of facts and weekly claims to the paying State before payment can be made.

¹² "Paying State" is defined in article III, A.3. of the Arrangement as "a participating State in which a claim has been filed"; article III. A.4. defines "Liable State" as "a participating State under whose unemployment compensation law an interstate claimant is currently eligible to receive benefits at the time he files a claim in another participating State." A participating State means a State which has accepted the arrangement. (article III. A.1.). The paying State is reimbursed by the liable State on a quarterly basis. (article III. E.).

own law. It will be readily observed that this procedure eliminates the need for weekly communications between the States, and permits an interstate claim to be treated with as much dispatch as an intrastate claim after the initial stage has been passed.

Whether or not the Interstate Arrangement is a legally authorized method for the payment of benefits to interstate workers requires consideration of the following questions:

1. Is a State unemployment compensation agency, authorized under the law establishing it, to enter into an interstate arrangement which would apply the eligibility and disqualification provisions of another State's unemployment compensation law to interstate claimants whose rights to benefits have been established under its own law?

2. Has Congress given its consent to interstate agreements in the field of unemployment compensation?

3. Does the Interstate Arrangement violate the Fourteenth Amendment?

1. *The Legal Basis in Unemployment Compensation Laws for Participation by State Agencies in the Arrangement.*

At first it might seem that the situation presents many analogies to a conflict of laws problem. We have a "right" created under the laws of one State sought to be enforced under the laws of another State. But under the unemployment compensation law the claimant has no "right" against the employer and, although it is true that he has a right against the agency for the payment of his benefits once he has complied with the requirements for such payment, such right can be enforced only in the manner and before the particular tribunal established by State law and applicable regulation. It is not a right which can be enforced by the courts of another State. In view of the difference in the nature of the rights in question, it would seem that concepts arising out of conflicts of laws involving private rights would not be relevant here.

The consideration of the problem at hand, therefore, must proceed on the basis of the legality of the proposal measured against the existing and applicable State and Federal law.

A. *Statutory Authorization*

In general, the State law provisions considered to authorize participation in the Interstate Benefit Payment Plan and the Arrangement, read as follows:

(a) The Commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other States or the Federal Government whereby:

(2) Potential rights to benefits accumulated under the unemployment compensation laws of one or more States or under one or more such laws of the Federal Government, or both, *may constitute the basis for the payment of benefits*

through a single appropriate agency under terms which the commissioner finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(3) Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another State or of the Federal Government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this Act, and wages for insured work, on the basis of which an individual may become entitled to benefits under this Act shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another State or of the Federal Government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this Act upon the basis of such wages or services, and provisions for reimbursement from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the commissioner finds will be fair and reasonable as to all affected interests; . . .

Subsection (a) (2) authorizes the State where the wages were earned (liable State) and the State where the worker files a claim for benefits (the agent or filing State) to enter into agreement whereby the filing State acts as an agent of the liable State in the payment of benefits, the right to such benefits presumably being determined under the laws of the liable State, although the section is silent on this point. It may be urged that the words "under terms which the commissioner finds will be fair and reasonable as to all affected interests" invest the commissioner with the authority to enter into an agreement which results in the application of some of the provisions of the filing State's law. Such an argument is not without reasonable basis.

If it had been meant to limit cooperation under subsection (a) (2) merely to procedures, the requirement that the "terms" be "fair and reasonable as to all affected interests and will not result in any substantial loss to the fund" might be viewed as unnecessarily cautious, if not surplusage. However, if "terms" be construed to mean the imposition of conditions relative to the entitlement to and the payment and amount of benefits, then these safeguards are relevant and pertinent, and the protection of the fund against substantial loss is an important consideration. So viewed, the statute would seem to provide an adequate standard for the administrative action contemplated.¹³

¹³ Cf. 1 SUTHERLAND, STATUTORY CONSTRUCTION, (3d ed. Horack 1943), Section 314 where it is stated: "Where . . . frequent adjustment or detailed expert knowledge of the field is necessary, a legislative delegation with general policy standards is valid. The validity of a particular standard therefore, depends primarily on the field of activity regulated. Thus in the field of public

An alternative basis for the Arrangement may be found in subsection (a) (3) above. That subsection seems to contemplate that the filing State will act as a principal, accepting the wages earned in another State as wages under its law for the purpose of determining an individual's "rights to benefits" under the filing State's own law. The question now facing us is whether this language admits of a determination, initial or otherwise, by the liable State. It may be conceded that the section does not specifically prohibit such a determination. The term "rights to benefits" might be considered as meaning, in such case, rights to payments under the law of the agent State even though the benefit amount is fixed in another State. If the filing State accepts the wages earned in the liable State, and considers that the incidents of the initial determination may legally be accepted by it under a provision similar to subsection (a) (2), there is little basis for objection at this stage by the claimant. The liable State is, by an agreement under subsection (a) (2), protecting and stabilizing the benefit rate of the claimant. As to the filing State, it can fairly be said that the method of computation is reasonably a subject of administrative agreement since the amount of benefits paid will be the subject of reimbursement by the transferring State and no loss can result to its fund.

The argument might, however, be made that to permit the commissioner to incorporate into the State law, under the guise of a reciprocal arrangement under either subsection (a) (2) or (3) above, conditions of eligibility and disqualification of another State's law, would be a usurpation of the functions of the legislature. This view would presumably be based on the principle that an administrative agency cannot by rules, regulations or agreements alter the basic law under which it operates. The resolution of these opposing positions hinges, of course, on the meaning accorded the applicable statutory provisions and to what extent the arrangement is deemed a proper subject for administrative action.^{13a}

health, safety, and morals, general and indeterminate standards of policy have usually been sustained and wide discretion has been left to administration. Likewise, where the delegation involves the regulation of monopolies and businesses affected with a public interest, such general terms as 'reasonable' and 'public convenience, interest or necessity' have been held sufficiently concise standards." Moreover, the granting of broad powers in connection with the expenditure of public funds is not novel and has been recognized and upheld by the courts as not constituting an invalid delegation of legislative power. *People v. Tremaine*, 252 N.Y. 27, 168 N.E. 217 (1929); *Bonsteel v. Allen*, 83 Fla. 214, 91 So. 104 (1922); *Abbott v. Commissioners*, 160 Ga. 657, 129 S.E. 38 (1925); *Edwards v. Childer*, 102 Okla. 158, 228 Pac. 472 (1924); *Holmes v. Olcott*, 96 Ore. 33, 189 Pac. 202 (1920); *State v. Zimmerman*, 183 Wis. 132, 197 N.W. 823 (1924); *U.S. v. Hanson*, 167 Fed. 881 (9th Cir. 1909). Cf. *Butte City Water Co. v. Baker*, 196 U.S. 119, 126 (1905).

^{13a} During the 1949 legislative sessions, several States have adopted legis-

B. *Does the Statute Permit an Invalid Delegation of Legislative Power*

It may, however, be argued that even if subsections (a) (2) and (3) be interpreted as authorizing reciprocal arrangements which impose different conditions on an interstate claimant, as compared to an intrastate claimant, both the subsections and the agreements here contemplated, insofar as they purport to adopt or to authorize the adoption of prospective legislation of another State, would constitute an invalid delegation of legislative power. The obvious answer is that the agreements need not adopt prospective legislation to achieve the desired result and may be limited to existing legislation, as hereinafter pointed out in more detail. It might, however, be pertinent at this point to consider the problem presented by the adoption of the law of another State.

The general view regarding the delegation of legislative power involved in the adoption of the statutes of another State or of Congress may be stated as follows:

Such adoption . . . is almost universally sustained when the foreign law as then *existing* is adopted as the law of the adopting State. Where the local legislation is contingent upon the enactment of a statute of another State or of Congress, some courts have held the statutes invalid. And more have held the adoption of prospective legislation in other States and in Congress as unconstitutional delegation. But the better view favors the validity of the statute in all three circumstances.¹⁴

lation designed to furnish a clear statutory basis for the Arrangement. For example, in Washington, section 44 of the Washington Unemployment Compensation Act (Chapter 35, Laws of 1945, Section 9998-182, Remington's Revised Statutes, 1945 supp.) was amended by H.B. 487, L. 1949, to read in part as follows: "The Commissioner may enter into agreement with any other state whereby in the event an individual files a claim in another state against wages earned in employment in this state . . . the claim will be paid by this state or another state as designated by the agreement in accordance with a determination on the claim as provided by the agreement and pursuant to the qualification and disqualification provisions of *this act or under the provisions* of the law of the designated paying state (including another state) *or under such combination of the provisions of both laws as shall be determined by the Commissioner as being fair and reasonable to all affected interests.*" (Amendatory language italicized.) The Nebraska Employment Security Law (section 48-601 et seq., Revised Statutes of Nebraska, 1947 supp.) was similarly amended by L.B. 125, L. 1949, as follows: "Sec. 48-668(1) . . . (c) Potential rights to benefits under the provisions of sections 48-601 to 48-668 may constitute the basis for payment of benefits by another state or the Federal Government . . . *Such benefits shall be paid under such provisions of sections 48-601 to 48-668 or under the provisions of the law of such state or the Federal Government or under such combination of the provisions of both laws, as may be agreed upon as being fair and reasonable to all affected interests.*" (Italics indicate amendatory matter.)

¹⁴ 1 SUTHERLAND, STATUTORY CONSTRUCTION 68 (3d ed. Horack 1943).

If subsections (2) and (3) and the agreements contemplated by the Arrangement are viewed as adopting prospective legislation of another State, there would be, as indicated in the above quotation, serious question as to their validity. Although an examination of the cases in the various States indicates a diversity of opinion on the subject, it appears to be the prevailing view in most jurisdictions that the adoption of prospective legislation or administrative rules of another State, or of the Federal Government, constitutes an invalid delegation of legislative power.¹⁵ Several cases which exemplify this diversity of opinion are briefly set forth below.¹⁶

¹⁵ *In re Opinion of Justices*, 239 Mass. 606, 133 N.E. 453 (1921); *State v. Intoxicating Liquors*, 121 Me. 438, 117 Atl. 588 (1922); *State v. Gauthier*, 121 Me. 522, 118 Atl. 380 (1922); *Holgate Bros Co. v. Bashore*, 331 Pa. 255, 200 Atl. 672 (1938); *Smithberger v. Banning*, 262 N.W. 492 (Neb. 1935); *Cf. State v. Webber*, 125 Me. 319, 133 Atl. 738 (1926). This prevailing view has been criticized by several leading students of the subject. See Mermin, *Cooperative Federalism Again: State and Municipal Legislation Penalizing Violation of Existing and Future Federal Requirements*, 57 YALE L.J. 1, 26 (1947).

¹⁶ An ordinance of the City of Detroit making it an offense to sell a commodity rationed by a Federal order or regulation without taking in exchange required coupons, or to sell such rationed commodities at a price in excess of ceiling prices, was held not to constitute an invalid "delegation of legislative authority" to an agency of the Federal Government. *People v. Sell*, 310 Mich. 305, 17 N.W. 2d 193 (1945). A similar ordinance of the City of Cleveland was held to be an invalid delegation. *City of Cleveland v. Piskura*, 145 Ohio St. 144, 60 N.E. 2d 919 (1945).

In Ex Parte Lasswell, 36 P. 2d 678 (Cal. 1934) a State Industrial Recovery Act providing for adoption of industry codes to be promulgated by Federal authorities was sustained. In New York, a similar statute was held to be an invalid delegation of legislative authority, *Daweger v. Staats*, 267 N.Y. 290, 196 N.E. 61 (1935). The New York Court of Appeals had previously sanctioned legislation which taxed foreign corporations seeking to do business in New York the same amount as that which the States that created them imposed on New York corporations, *People v. Fire Association of Philadelphia*, 92 N.Y. 311, 44 Am. Rep. 380 (1883); and had sustained against a similar attack a statute taxing persons, firms and corporations coming into competition with the business of national banks, which business might be enlarged or diminished by act of Congress. *People ex rel Pratt v. Goldfogle*, 242 N.Y. 277, 151 N.E. 452 (1926). Some State unemployment compensation acts contain a provision reading substantially as follows: "The term 'employment' shall not include . . . any service not included as 'employment' under Title IX of the Social Security Act." Such a provision it was held, although proper as to existing legislation and rulings, would be an unconstitutional delegation of legislative power if interpreted to permit the adoption in advance of any Federal act or any Federal ruling that might be passed or made in the future. *Colony Town Club v. Michigan Unemployment Compensation Commission*, 301 Mich. 107, 3 N.W. 2d 28 (1942); *Minor Walton Bean Co. v. Michigan Unemployment Compensation Commission*, 308 Mich. 636, 14 N.W. 2d 524 (1944); *Florida Industrial Commission v. State*, 21 So. 2d 599 (Fla. 1945). But a section in the California law which provided for an exemption where the services are performed "in the employ of a non-profit organization or corporation . . . where none of the foregoing corporations or organizations is subject to a tax under Title IX of the

It is unnecessary, however, to resolve the question of whether a State may adopt *in futuro* legislation of another jurisdiction in order to sustain the Arrangement.

Much of the objection to the Arrangement stems from the view that the "adoption of another State's law" (whether existing or prospective) for the purpose of determining certain claims, is somehow a surrender of sovereignty. But this argument is primarily over nomenclature, for use of the term "another State's law," would seem to imply that legislative action is required to achieve the result desired, whereas if the standard for the determination of an interstate claim be called "terms," a great deal of the force of the argument is dispelled. Moreover, it was a sovereign legislature which, by enacting provisions similar to section (a) (2) vested power in the commissioner to impose upon an interstate claimant terms which are measured by the legislative standard that they be "fair and reasonable as to all affected interests and will not result in any substantial loss to the fund." Such terms may be established independently of the law of another State. In view of the claimant's absence from the liable State, the commissioner (in the exercise of the power delegated by the legislature) may find that claimant's eligibility cannot be determined effectively by the test in use for an intrastate claimant. If he then may, by agreement with another State, impose additional requirements, the mere fact that the language of the law of such other State is employed in stating these requirements is a mere coincidence and does not change the agreement—it is still an administrative arrangement. In order to determine the terms of the agreement, it may be necessary to refer to the laws of another State, but such law is an extrinsic factor, and the commissioner has not surrendered to the legislature of another State the power to determine the terms under which an interstate claim is to be paid. While a change in the agreement may follow from a change in the law, the subject is still the commissioner's to determine, and the agreement represents such determination. Any effect the law of another State may have on an interstate claimant is derived, not from its status as a legislative enactment, but from the fact that the substance of such law has become the "terms" agreed on by the commissioner. Although the "terms" are thereby made identical with the agent State's law, the fact remains that the claimant is affected by the conditions of the agreement and *not* by the laws of another State.¹⁷

But even if an agreement be considered to adopt another State's

Social Security Act," was sustained without any qualification. *Scripps Memorial Hospital, Inc. v. California Employment Commission*, 151 P. 2d 109 (Calif. 1944).

¹⁷ If the agreement among the participating States were to incorporate the provisions of the various laws which are to be made applicable to interstate

law, it need adopt only *existing State law*, which, under the general rule expressed above, is proper. In the event of a change in the law of one participating State, the amendment could be agreed to by the other States and evidence of such assent made part of the individual agreements. Of course, this necessarily implies that the commissioner may, if he believes the amendments fall short of fair and reasonable terms, refuse to renew the agreement and instead may make a substitute arrangement such as the Interstate Benefit Payment Plan now in operation or whatever other plan may be available.¹⁸ Thus the charge could not be made that the agreement requires the Commissioner to adopt prospective legislation.¹⁹

In *Hutchins v. Mayo*,²⁰ a State statute, regulating the citrus fruit industry and providing that fruit should be graded according to standards established from time to time by the State commission, or, at the option of the shipper, according to the standards "as now fixed by the United States Department of Agriculture or as such standards may be hereafter modified or changed," was held to delegate legislative power unlawfully in that it extended the option beyond the existing Federal standards.²¹ The court said, and the language would seem applicable to the problem here considered:

Again the question of delegation of power arises, this time by the State legislature to the federal bureau. We do not question the authority of the legislature to make optional the regulations of the latter as they then existed but rules thereafter adopted by this [federal] agency could not be made effective unless subsequently accepted by the commission in whom such power was reposed by the state legislative body. There should be secured to the state commission the power to fix and enforce its own rules. If wisdom dictates the adop-

claimants, their use as "terms," as opposed to an "adoption of the law of another State" would be more readily apparent.

¹⁸ The Arrangement makes no specific provision as to the effect of a change in the law of any of the participating States although under Article II of the Arrangement, "any State accepting the Arrangement may cease to participate by filing notice with the chairman of the committee. Its participation shall cease at the expiration of three months from the date of filing such notice."

An example of an appropriate provision for this purpose is contained in the amendment to the Nebraska law made by L.B. 125, L. 1949 (see footnote 13^a), which added the following paragraph to the section on reciprocal agreements of the Nebraska Employment Security Law:

"Sec. 48-668 . . .

"(2) If after entering into an arrangement provided by this section the Commissioner finds that the employment security law of any state or of the federal government participating in such arrangement has been changed in a material respect, the Commissioner shall make a new finding as to whether such arrangement shall be continued with such state or with the federal government."

¹⁹ *Holgate Bros. Co. v. Bashore*, 331 Pa. 255, 200 Atl. 672 (1938).

²⁰ 143 Fla. 707, 197 So. 495 (1940).

²¹ But see *People v. Sell*, 310 Mich. 305, 17 N.W. 2d 193, 199 (1945).

tion from time to time of those of the federal agency the practical result will be precisely the same but we feel that at all times the power granted in the act should be exercised by the state commission.²²

Thus, a commission may be empowered, as under section (a) (2), *supra*, to adopt the existing legislation of another State from time to time, although if the same result were achieved by providing for the adoption of such legislation *in futuro*, it would probably be held to be an invalid delegation of legislative power.

The only case involving the validity of the Interstate Arrangement so far reported, however, holds the Arrangement to be invalid.²³ This decision, which was rendered by the California Unemployment Insurance Appeals Board, an administrative tribunal, concludes that "the Interstate Arrangement is invalid because it is an attempt to delegate to the agency of another State powers which have been given by the legislature of this State to the California Department of Employment and because it is beyond the authority to enter into reciprocal arrangements provided in section 56.5 of the Act."

The Board observed that section 56.5(b) of the California Unemployment Insurance Act²⁴ (substantially the same as subsection (a) (2) quoted above at page 00) "confers upon the Department [of Employment] authority to enter into agreements to simplify procedures but not to alter fundamental rights of either claimants or employers as the Arrangement does." With this view of the limited authority granted to the Department, the Board's conclusion is not surprising. However, in the opinion of the writer, this construction of the statute is less reasonable than the broader construction suggested above.

The only element introduced by this case not heretofore considered is the effect of the Arrangement on employers. Under the

²² "Decisions holding that the prospective adoption of foreign legislation is an invalid delegation of power seem particularly artificial in many situations where, if the authority was delegated under proper standards to an administrative officer, he would in fact adopt legislation and administrative regulations of other states or of the federal government." SUTHERLAND, *op. cit. supra*, note 14, § 310. The case discussed in the text illustrates this criticism. Cf. Brock v. Superior Court, 9 Cal. 2d 291, 71 P. 2d 209 (1937) where the California court sustained a law which in effect empowered the state director of agriculture to base the grant of licenses on the provisions of Federal regulations. As the court pointed out (9 Cal. 2d 291, 298, 71 P. 2d 209, 213) the California law involved "no *automatic* incorporation by reference of future federal laws, but a declared policy of making our law correspond with *Federal* regulation under circumstances set forth in our statute, and an adequate constitutional means for carrying that policy into effect." (Emphasis supplied.)

²³ 2 C.C.H., Unemployment Ins. Serv. Calif., ¶ 8594 (Calif. Unemployment Appeals Board Dec. No. 8709, Oct. 1948).

²⁴ CAL. GEN. LAWS act 8780 d (1944).

system adopted by California to finance the payment of unemployment compensation, the amount of benefits paid to his employees is a factor in determination of an employer's rate of contributions.²⁵ The Board considered that the employer, accordingly, had a "fundamental right" conferred by the statute to have the claimant's right to benefits determined under the California law. The Board failed to recognize, however, that a right conferred by a statute may be limited or curtailed in certain situations by the legislature. Thus, the right to appeal to California administrative bodies granted to employers by section 67 of the California law may, under section 56.5(b) of the same law, be modified by the agency. Besides, the employer has no standing to complain of any conditions the law may impose on the payment of benefits; "the State is free to distribute the burden of a tax without regard to the particular purpose for which it is to be used."²⁶ To hold the Arrangement invalid because it curtails (or enlarges) certain "rights" conferred by the statute begs the question at issue—whether the statute authorizes the administrative agency to affect such "rights" by reciprocal agreements.

2. *Has Congress Given Its Consent to Interstate Arrangements for the Payment of Unemployment Compensation*

Whether interstate compacts in the field of unemployment insurance require Congressional consent for their validity²⁷ has never been decided.²⁸ Assuming Congressional consent is required for

²⁵ For a discussion of the various methods of computing employers' unemployment compensation contributions see Arnold, *Experience Rating*, 55 YALE L.J. 218 (1945).

²⁶ *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 525 (1937).

²⁷ "No State shall, without the consent of Congress . . . enter into any agreement or compact with another State, or with a foreign power." U.S. CONST., Art. I, § 10, cl. 3.

²⁸ The distinction between interstate agreements which may be entered into only with the approval of the national government and those which may be legally consummated without congressional consent is far from clear and has been the subject of considerable comment and speculation among law writers. Frankfurter and Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustment*, 34 YALE L. J. 685 (1925); Bruce, *The Compacts and Agreements of States with One Another and with Foreign Powers*, 2 MINN. L. REV. 500 (1918); Dodd, *Interstate Compacts*, 70 U.S. L. REV. 557 (1936); Clark, *Interstate Compacts and Social Legislation*, 50 POL. SCI. Q. 502 (1935); Weinfeld, *What Did the Framers of the Federal Constitution Mean by 'Agreement or Compacts'?*, 3 U. OF CHI. L. REV. 453 (1936). Cf. *Massachusetts v. Missouri*, 308 U.S. 1, 16 (1939) which involved a controversy over the enforcement of the reciprocal provisions of the tax statutes of the two states. In commenting on the legal effect of such reciprocal statutes, the Supreme Court observed: "But, apart from the fact that there is no agreement or compact between the states having constitutional sanction, U.S.C.A. Const. Art I, sec. 10, par. 3, the enactment by Missouri of the so-called reciprocal legislation cannot be regarded as conferring upon Massachusetts any contractual right."

these compacts,²⁹ the legislative history of the unemployment insurance provisions of the Social Security Act³⁰ reasonably supports the view that implied Congressional consent to these agreements has been given and with respect to the Arrangement under consideration such consent may reasonably be said to have been given in advance.

The Constitution does not state when the 'consent of Congress' shall be given, whether it shall precede or may follow the compact made, or whether it shall be expressed or may be implied.³¹

Turing to the record of the hearing on the *Economic Security Act* before the House Committee on Ways and Means³² and the Senate Committee on Finance,³³ we find that the problem of the payment of benefits to interstate workers was clearly recognized. The *Report of the Committee on Economic Security* (included in the published records) states:

A federally administered system of unemployment compensation is undoubtedly superior [to a cooperative Federal-State system] in some respects, particularly in relation to employees who move from State to State. This presents a problem involved in State administration which we do not at this time know how to solve, although we do not regard it as insoluble and recommend that it should be made one of the major subjects of study of the Federal administrative agency.³⁴

The *Report of the Advisory Council to the Committee on Economic Security*, which advocated the inclusion in the Federal Act of standards as to details of State laws (a suggestion which was not followed), listed as one of the items to be incorporated a statement relating to the "interstate transfer of employees":

The principle should be recognized that employees who have unused benefit credits should not lose those credits because they change their employment from one State to another but no entirely practical plan to carry out this principle has as

²⁹ Several writers have indicated that such consent is probably necessary. Cook, *The Bodies Administering Unemployment Compensation Laws* 3 LAW & CONTEMP. PROB. 95, 99, n. 29 (1936); Note, *The Interstate Problems of the Unemployment Compensation Program*, 36 ILL. L. REV. 862, 867, n. 22; 870-872 (1942).

³⁰ 49 STAT. 626 (1935); 42 U.S.C. §§ 501-503 (1946); 53 STAT. 1378 (1939); 42 U.S.C. § 502, 503 (1946); 49 STAT. 639 (1935); 42 U.S.C. §§ 1011-1102 (1946).

³¹ *Virginia v. Tennessee*, 148 U.S. 503, 521 (1893).

³² *Hearings before the Committee on Ways and Means on H.R. 4120*, 74th Cong., 1st sess.

³³ *Hearings before the Committee on Finance on S. 1130*, 74th Cong., 1st sess.

³⁴ *Hearings before Committee on Ways and Means*, *id.* P. 31; *Hearings before Committee on Finance*, *id.* p. 1323.

yet been worked out. It is recommended that the Federal administrative agency be given authority to promulgate rules for carrying out the principle herein stated prior to the time when benefits become actually payable.³⁵

A statement submitted by Dr. Eveline M. Burns of Columbia University pointed out with marked prescience³⁶ that:

Under the present bill, which visualizes 48 different schemes, the only way to protect the rights of employees now in one State and now in another, but working always in employment subject to the Act, is to provide for reciprocity agreements between all the different funds. Should all States take advantage of the opportunity to conduct experiments (on which so much emphasis is placed by framers of the bill) each State will have to conclude an agreement with all 47 others if mobile workers are to be assured full protection of their accumulated rights.

This statement placed squarely before the committees the necessity for interstate agreements to insure the payment of benefits to interstate workers under the proposed bill and indicated that a fair interpretation of the bill authorized such arrangements.

The choice before the committee was to recommend a bill which "except for a few standards . . . necessary to render certain that the State unemployment compensation laws are genuine unemployment compensation acts and not merely relief measures . . . left [the States] free to set up any unemployment compensation system they wish, without dictation from Washington,"³⁷ or to recommend a Federal unemployment compensation system, or to recommend a Federal law which would specify in detail the provisions to be contained in the State acts.³⁸ The necessity for immediate Federal action in the field, coupled with uncertainty as to the most practical form of an unemployment compensation act, led to the adoption of the first alternative mentioned, which permitted and encouraged experimentation by the States. Against this background, it is not difficult to understand why a provision relating to interstate arrangements, which would have required specific action by the States, was not included in the statute.

Two model draft bills for State legislation presented to the Senate Committee by the *Committee on Economic Security*, contained identical sections entitled "Reciprocal Benefit Arrangements with Other States,"³⁹ which foreshadowed present provisions on the

³⁵ *Hearings before Committee on Ways and Means*, *id.* p. 886; *Hearings before Committee on Finance*, *id.* p. 230.

³⁶ *Hearings before Committee on Ways and Means*, *id.* p. 1095.

³⁷ SEN. REP. No. 661, 74th Cong. 1st sess., 13 (1935).

³⁸ Although various other formulae were offered, the three plans mentioned appear to have been the major items under consideration.

³⁹ These sections read as follows: "The commission is hereby authorized, subject to approval by the governor, to enter into reciprocal arrangements with

subject and further spotlighted the question.

It is thus evident that the contemporary interpretation of the proposed law visualized interstate arrangements as not only authorized under it, but necessary to link the State unemployment compensation laws into a unified system protecting the unemployed workers of the country. In these circumstances, although no express approval is given to such arrangements in either of the committee reports, this silence is reasonably interpreted as a tacit consent.

It may well be that neither the legislative committees nor the proponents of the bill, as finally enacted, viewed these reciprocal agreements as anything more than mere administrative arrangements and, as such, not in the category of compacts subject to and requiring Congressional consent. Nevertheless, the facts surrounding the passage of the legislation would seem to give adequate support to the contention that Congress intended that such arrangements, whether compacts or not, might be entered into.

Moreover, subsequent Congressional action, taken with full awareness of existing interstate arrangements, is consistent with this view. It seems settled that implied consent of Congress to an interstate compact may be derived from the subsequent actions of that body.⁴⁰

the proper authorities, in the case of any other unemployment compensation system established by any State law or by an act of Congress, as to persons who have (after acquiring rights to benefits under this act or under such other system) newly come under this act or under such other system, whereby such benefits (or substantially equivalent benefits) shall be paid (or both paid and financed) in whole or in part through (or by) the fund of the unemployment compensation system newly applicable to such person. Such reciprocal arrangements shall be adopted and published by the commission in the same manner as its general rules.

"Note—The above section is designed to make possible reciprocal arrangements whereby an employee will not lose his benefit rights if he moves from one State to the other, or from employment covered by a direct act of Congress. The wording should not be altered."

Hearings before Committee on Finance, id., pp. 606, 627. Additional references to the problem presented by interstate workers which, though relevant, are merely cumulative in effect follow: Paragraph I (4), memorandum submitted by Dr. Paul H. Douglas, *Hearings before Committee on Ways and Means*, p. 1086; Statement of Senator Wagner, *Hearings before Committee on Finance*, p. 3; Statement of Professor Tyson, *ibid.*, pp. 738, 742; Statement of Helen M. Hall, *ibid.*, p. 768; Statement of Charlton Ogburn, *ibid.*, p. 775; Statement of Robert O. Elbert, *ibid.*, p. 827; Paragraph II (4), memorandum submitted by Dr. Paul H. Douglas, *ibid.*, p. 894; Statement of Paul Kellog, *ibid.*, p. 904; Editorial from *The Washington Post*, *ibid.*, p. 1092.

⁴⁰ Story's *Commentaries on the Constitution* states (Sec. 1405): "But the consent of Congress may also be implied; and indeed, is always to be implied when Congress adopts the particular act by sanctioning its objects and aiding in enforcing them."

In *Virginia v. Tennessee supra* note 27, the compact involved the adjust-

That Congress was informed of the existence and progress of interstate arrangements seems apparent. In the hearings on the proposed Railroad Unemployment Insurance Act of 1938⁴¹ the Interstate Benefit Payment Plan (as it then existed) was brought to the attention of the Congressional Committees there concerned. A press release of the Social Security Board, dated May 27, 1938, and entitled "State Unemployment Insurance Agencies to Cooperate in Paying Benefits to Multi-State Workers," was incorporated in the hearings before the House Committee.⁴² This release set forth and discussed the operation of the Interstate Benefit Payment Plan and listed the States which had agreed, as of that time, to participate in it. Other allusions were made to the existence of the Interstate Benefit Payment Plan during the hearings⁴³ and the legality and validity of the agreements underlying the plan were apparently accepted without question.

The Railroad Unemployment Insurance Act,⁴⁴ as finally adopted, indicates that Congress approved interstate agreements as part of the services and facilities to be utilized by the Railroad Retirement Board⁴⁵.

ment of a boundary dispute between the two States and the Supreme Court held that a consent by Congress to the compact, if needed, might be found in its subsequent actions towards the States.

"The approval by Congress of the compact entered into between the States upon their ratification of the action of their commissioners is fairly implied from its subsequent legislation and proceedings. The line established was treated by that body as the true boundary between the States in the assignment of territory north of it as a portion of districts set apart for judicial and revenue purposes in Virginia, and as included for which appointments were to be made by federal authority in that State, and in the assignment of territory south of it as a portion of districts set apart for judicial and revenue purposes in Tennessee, and as included in territory in which federal elections were to be held, and for which federal appointments were to be made for that State. Such use of the territory on different sides of the boundary designated, in a single instance would not, perhaps, be considered as absolute proof of the assent or approval of Congress to the boundary line; but the exercise of jurisdiction by Congress over the country as a part of Tennessee on one side, and as a part of Virginia on the other, for a long succession of years, without question or dispute from any quarter, furnishes as conclusive proof of assent to it by that body as can usually be obtained from its most formal proceedings."

⁴¹ *Hearings before a subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 75th Cong., 3rd. sess., on H.R. 10127; Hearings before the Committee on Interstate Commerce, United States Senate, 75th Cong., 3rd. sess. on S. 3772.*

⁴² *Hearings before the House Subcommittee, ibid., p. 226.*

⁴³ *Hearings before the House Subcommittee, ibid., pp. 24, 72, 121, 209; Hearings before the Senate Committee, ibid., pp. 119, 177.* The report of the House Committee (which was adopted by the Senate Committee) on the Railroad Unemployment Insurance Act does not, however, mention the Interstate Benefit Payment Plan.

⁴⁴ 60 STAT. 722, 45 U.S.C. § 351 (1946).

While the silence of Congress in the circumstances above described is evidence of its approval of interstate agreements, it is not the only evidence we have of such approval. Perhaps the most conclusive proof of Congressional consent is to be found in the history of the 1939 amendments to the Social Security Act. As originally enacted,⁴⁶ section 303(a)(2) required as a condition of approval for grants by the Social Security Board:

Payment of unemployment compensation solely through pub-

⁴⁶ Section 325(f) of the Railroad Retirement Act provides in part as follows: "The Board may cooperate with or enter into agreement with the appropriate agencies charged with the administration of State, Territorial, Federal, or foreign unemployment-compensation laws or employment offices The Board may enter also into agreements with any such agency, pursuant to which any unemployment benefits provided for by this chapter or any other unemployment compensation law, may be paid through a single agency to persons who have, during the period on the basis of which eligibility for and duration of benefits is determined under the law administered by such agency or under this chapter, or both, performed services covered by one or more of such laws, or performed services which constitute employment as defined in this chapter: *Provided*, That the Board finds that any such agreement is fair and reasonable as to all affected interests." (Emphasis supplied.)

The term "such laws" as employed in the phrase "performed services covered by one or more such laws" obviously refers to "any other compensation law" which, in turn, may be defined in the language of the first sentence of this subsection, as a "State, Territorial, Federal, or foreign unemployment compensation law." There is nothing in the chapter which evinces the intention to limit the meaning of "such laws" to any particular combination, and "one or more such laws," then, may be a Federal and Territorial law; or a Federal and State law or *one or more State laws*. If the services performed are covered by more than one State law, it necessarily follows that the agency with which the agreement is made, in order to have any interest in such services, must have made a further agreement with such other State or States, regarding these services. Such further agreement is, I think, necessarily implied by this language. Whether the agreement between the States be termed a reciprocal agreement, an arrangement or a compact is immaterial, for the point is that Congress authorized the Railroad Retirement Board to enter an agreement which had as one of its elements an existing interstate agreement. The inclusion in the committee reports of a letter from Dr. Altmeyer addressed to the House Committee, dated April 25, 1938, strengthens this conclusion. The letter pointed out that "as regards the difficulties of the railroads reporting to 52 separate jurisdictions, it should be pointed out that under arrangements that have been developed by the States and Territories, the employment of any employee working in more than one State is credited to only one State. Therefore, the railroad companies are required to pay taxes and report the employment of such a person to only one State. When such an employee becomes unemployed, he may file his claim for unemployment compensation in only one State and draw all his benefits from that State." The language of subsection (f), quoted above, is calculated to permit States participating in such an arrangement to utilize the Railroad Retirement Board's facilities for the payment of benefits due as a result of the operation of the arrangement.

⁴⁶ STAT. 626 (1935), 42 U.S.C. §§ 501-503 (1946).

lic employment offices *in the State* or such other agencies as the Board may approve. (Emphasis supplied.)

In 1939,⁴⁷ section 303 (a) (2) was amended⁴⁸ by striking out the words "in the State." Discussing this amendment, the committee reports,⁴⁹ in identical language, stated:

The amendments made by this section to paragraph (s) (2) . . . of Section 303 (a) of the Social Security Act . . . [is] designed to make clear that . . . cooperative arrangements may be made for payment of compensation (in the case of workers who have moved from the State in which their compensation rights were earned) by one State through employment offices in another State.⁵⁰

Approval of interstate agreements here given is in broad terms, and approaches the character of express approval.

3. *Constitutional Implications of the Arrangement for Determination and Payment of Interstate Claims*

Some question has been raised as to whether the Arrangement, and the law authorizing it, violate the equal protection clause of the Fourteenth Amendment.⁵¹ As one State Attorney General has pointed out:

The first of these [questions] derives from the fact that under the plan [Arrangement], after the initial determina-

"In its Second Annual Report (1937) to Congress, the Social Security Board, reporting on the progress of interstate arrangements, stated: "Plans for the payment of benefits to workers who have accumulated rights to benefits in more than one State have been worked out tentatively by a committee of the Interstate Conference and the Board. It is hoped that an *interstate compact* embodying these provisions may be adopted in time to go into effect when benefit payments begin in a large number of States in January 1938." (p. 65.) (Emphasis supplied.) If Congress had not hitherto been aware of the nature of the interstate arrangements contemplated, the appellation "interstate compact" applied to them should have been sufficient indication of the possible necessity of Congressional consent for the validation of such arrangements. The amendment to Section 302(a) (2) was apparently intended to give such consent.

⁴⁶ 53 STAT. 1378 (1939); 42 U.S.C. §§ 502, 503 (1946).
503 (1946).

⁴⁷ H.R. REP. NO. 728, 76th Cong., 1st sess. 55 (1939). SEN. REP. NO. 734, 76th Cong., 1st sess. 65 (1939).

⁴⁸ It is worthy of note that the Veterans' Administration has interpreted Section 696 (f) (a) of the Servicemen's Readjustment Act of 1944 (58 Stat. 295 (1944), 38 U.S.C. § 696 (1946), which permits the utilization of services and facilities of State agencies, as an authorization by Congress to utilize the Interstate Benefit Payment Plan in the payment of allowances under that Act. In providing for a transfer of claims between State agencies the pertinent regulation, among other options, permits a veteran who has been receiving an allowance and has moved to another jurisdiction, to continue his claim against the original agency under the Interstate Benefit Payment Plan. (Sec. 12, Veterans' Administration Instruction No. 1.)

⁵¹ " . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST., Art. XIV.

tion of eligibility for benefits, the law of the state where claim is filed, as distinguished from the Florida laws, will determine the continued right to benefits even though the laws of such state covering eligibility for benefits after such initial determination may be at distinct variance with, and more lenient to the claimant, than provisions of Section 443.06, Florida Statutes, 1941, as amended, related to such issues.

It would not seem necessary to point out the obvious constitutional implications presented by the questions concerning such plan mentioned above.⁵²

As a converse to the situation envisaged in the above quotation, an interstate claimant might, in a given factual situation, be denied benefits under the law of the State where he files his claim for unemployment compensation, although upon the same facts he would have been entitled to benefits under the law of the State in which his wages were earned. Different treatment would thus be accorded intrastate and interstate claimants under the Arrangement.

The issue thus presented for consideration is whether a classification into intrastate claimant and interstate claimants, founded upon a claimant's presence in or absence from the jurisdiction of the liable State at the time he files a claim for unemployment compensation, and the application of different eligibility and disqualification provisions to the members of each of such classes constitutes a denial of the equal protection of the laws.

It would seem well settled that there is no constitutional guarantee that all persons subject to a law will be treated in identical fashion. As was said in *Fort Smith Light Co. v. Paving District*.⁵³

Nor need we cite authority for the proposition that the 14th amendment does not require the uniform application of legislation to objects that are different where these differences may be made the rational basis of legislative discrimination.

Thus, it has been held that the equal protection clause "only prescribes that the law have the attribute of equality of operation and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations."⁵⁴ Nor does the Fourteenth Amendment prescribe the factors upon which a classification may rest.

Upon what differences or resemblances it [classification] may be exercised depends necessarily upon the object in view; may be narrow or wide according to that object. Red

⁵² Opinion of Attorney General, State of Florida, dated January 24, 1948.

⁵³ 274 U.S. 387, 391 (1927); *Phoenix Insurance Co. v. McMaster*, 237 U.S. 63 (1915); *Breedlove v. Suttles*, 302 U.S. 277 (1937).

⁵⁴ *Magoun v. Illinois Trust & Savings Bank*, 170 U.S. 283, 293 (1898). To the same effect *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540 (1902); *Missouri v. Lewis*, 101 U.S. 22 (1879).

things may be associated by reason of their redness with disregard of all other resemblances or of distinctions. Such a classification would be logically appropriate. Apply it further: Make a rule of conduct, depend on it and distinguish in legislation between red-haired men and black-haired men and the classification would immediately be seen to be wrong; it would have only arbitrary relation to the purpose and provisions of legislation.⁵⁵

Even if it be granted that the legislative judgment be disputable or even that some injustice and inequity results from the State law, a court will not hold the law invalid on these grounds. If authority to deal with that at which the legislation is aimed exists, a classification "may be harsh and oppressive, and yet be within the power of the legislature."⁵⁶ The courts are reluctant to invade the province of legislative discretion in classifying the objects of legislation and it has been held that if the classification is not palpably arbitrary and is uniform within the class, although not scientific or logically appropriate, it will be upheld.⁵⁷

It is established that distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed . . . and we repeat, "it may make discriminations if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary."⁵⁸

A cursory examination of the various unemployment compensation laws reveals that all of them to a greater or lesser degree discriminate against certain classifications of workers. For example, a worker who has not earned qualifying wages is denied benefits. Such a classification was sustained in *Carmichael v. Southern Coal & Coke Co.*,⁵⁹ where it was said:

In establishing a system of unemployment benefits the legislature is not bound to occupy the whole field. It may strike at the evil where it is most felt [citations], or where it is most practicable to deal with it [citations]. It may exclude others whose need is less [citations], or whose effective aid is attended by inconvenience which is greater [citations].

Again, various State laws contain seasonal provisions which restrict the benefit rights of workers engaged in seasonal industries. These classifications would seem to have been made upon a reasonable basis and to bear some relation to the payment of unemploy-

⁵⁵ *Tanner v. Little*, 240 U.S. 369, 382 (1916).

⁵⁶ *Tanner v. Little*, *id.* at 383.

⁵⁷ *Armour & Co. v. North Dakota*, 240 U.S. 510, 513 (1916); *Quong Wing v. Kirkendall*, 223 U.S. 59 (1912); *Mutual Loan Co. v. Martell*, 222 U.S. 225, 235 (1911); *Missouri, Kansas & Texas Ry. v. Cade*, 233 U.S. 642 (1914).

⁵⁸ *Rast v. Van Deman & Lewis*, 240 U.S. 342 (1916).

⁵⁹ 301 U.S. 495, 519 (1937).

ment compensation. A classification which is based on the jurisdiction where an individual files a claim for benefits and a discrimination which consists of the application of the eligibility and disqualification provisions of that jurisdiction to the claimant, similarly would not constitute a denial of the equal protection of the laws or an unreasonable discrimination. Essentially, the effect of the classification into intrastate and interstate claimants is to create a geographical classification which provides for the different treatment of individuals within different localities. That such a classification, of itself, is not invalid would seem clear.⁶⁰

Thus, it was contended that the Constitution and laws of Missouri which provided that appeals from certain areas of the State should be had only to certain courts violated the Fourteenth Amendment. This contention was rejected by the Supreme Court which declared:⁶¹

We might go still further, and say, with undoubted truth, that there is nothing in the Constitution to prevent any state from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its method of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the equal protection of the laws. *If every person residing or being in either portion of the State should be accorded equal protection of the laws prevailing there, he could not justly complain of a violation of the clause referred to. For, as before said, it has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.* (Emphasis supplied.)

This doctrine was applied to an unemployment compensation statute in *Eldred v. Division of Employment Security*⁶² by the Minnesota Supreme Court. There the unemployment compensation statute, which created a geographical classification resulting in the exclusion from unemployment benefits of workers employed in certain localities, was upheld. The statute provided in substance that services performed "outside of the corporate limits of a city, village, or borough of 10,000 population or more" for an employer "not subject to Title IX of the Federal Social Security Act" did

⁶⁰ *Fort Smith Light Co. v. Paving District*, *supra*; *Hayes v. Missouri*, 120 U.S. 68 (1887); *Barbier v. Connolly*, 113 U.S. 27 (1884); *Missouri v. Lewis*, 101 U.S. 22 (1879).

⁶¹ *Missouri v. Lewis*, 101 U.S. 22 (1879).

⁶² 295 N.W. 412 (Minn. 1940).

not constitute "employment" under the Minnesota unemployment compensation law. Claimant who was denied benefits under these provisions, attacked the statute as denying him the equal protection of the laws. Although the court questioned the right of the plaintiff to raise a constitutional issue, in view of the fact that the unemployment compensation law did not purport to confer any vested rights,⁶³ it proceeded to determine the case on its merits, and declared that the question facing it was "Does the quoted section create an arbitrary class, thereby offending constitutional prohibition against special legislation and inequalities?" This question is the precise one that concerns us here and the court's reasoning in arriving at its conclusion that the law did not so offend would seem to be applicable to the problem here considered. The court noted that the act did not deal with personal or property rights but was intended to operate exclusively in the field of social welfare, and held that there were sufficient facts to afford a reasonable basis for the classification. It was shown, first, that the need for unemployment compensation was less in rural than in urban centers and second, that the administrative expense in country districts was much higher than in city districts. "All these," the court said, "are factors which the legislature could well consider as a basis for distinction and consequent differentiation in classification."

Although in *Missouri v. Lewis*, supra, *Eldred v. Division*, supra, and the other cases cited on the point, the courts were considering geographical classifications *within the territorial jurisdiction of a State*, extension of the principles there enunciated to support the classification into intrastate and interstate claimants, which relates in part to areas *outside* the State, does not seem unreasonable. Indeed, such an extension would seem to present an a fortiori case since the basis of the classification is even clearer, and would appear even less arbitrary.

⁶³ Section 1603(a) (6) of the Federal Unemployment Tax Act, 53 Stat. 185, requires that a State law, to obtain approval by the Board, must contain, among other things, a provision that "all the rights, privileges or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time." All the State unemployment compensation laws contain such a section.

In the following cases it was held that unemployment compensation laws did not confer vested rights which could not be affected by subsequent legislation.

Moore v. Bureau of Unemployment Compensation, 73 Ohio App. 362, 56 N.E. 2d 520 (1943); *Shelley v. National Carbon Co.*, 285 Ky. 502, 148 S.W. 2d 686 (1941); *Talley v. Unemployment Compensation Division of Ind. Acc. Bd.*, 63 Idaho 644, 124 P. 2d 784 (1942); *Crosset Lumber Co. v. McCain*, 170 S.W. 2d 64 (Ark. 1943); *Southern Kraft Corp. v. McCain*, 171 S.W. 2d 947 (Ark. 1943).

That the distinction between an intrastate claimant and an interstate claimant is not an arbitrary or fanciful one is apparent even from a superficial examination. In order to make possible the payment of interstate benefits, special procedures must be created and the administrative facilities of another State must be utilized. Added to these factors is the consideration that an interstate claimant is attaching himself to the labor force in another State where different conditions may prevail. These elements would seem more than enough to remove the classification from the category of "unreasonable and purely arbitrary distinctions."⁶⁴

In the case of an interstate claimant, then, the argument that the payment of benefits to him is administratively more burdensome and more expensive than payment to an intrastate claimant and that considerable difficulty is entailed in securing facts necessary for determinations of eligibility and disqualification from another State, would seem to be reasonable and to justify the distinction. The interstate claimant is not being denied the equal protection of the laws; all interstate claimants in the State where he files his claim are subject to the same laws, and these laws are also applicable to other individuals in the same area. The legislature may deem it advisable, and it cannot be said that this action is unreasonable, to provide that if an individual goes to another State and, by filing a claim for unemployment compensation, indicates his intention to become part of the labor force in that State, that his entitlement to benefits shall be governed by the eligibility and disqualification provisions applicable to other members of the same labor force.

It is worthy of note that the interstate claimant is not bound permanently by the classification; he has the right to return to the liable State and have his right to benefits determined under its laws. It is his voluntary act which brings the eligibility and disqualification provisions of another State's law into operation. Although it is admitted that economic necessity may determine the State in which a claimant files for benefits, nevertheless, the *law* does not dictate where the claim shall be filed. Theoretically the claimant is free to select the State in which he shall file and *its law may be more favorable to him than that of the liable State*. No compulsion is exercised by the statute and the claimant may freely change his selection.

The State may further argue that it is under no obligation to accept claims filed outside of its jurisdiction.⁶⁵ In permitting a claimant to file outside of its jurisdiction, therefore, the State may

⁶⁴ *Denver v. New York Trust Co.*, 229 U.S. 123 (1913); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911); *Tanner v. Little*, 240 U.S. 369 (1916).

⁶⁵ *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937); *Eldred v. Division of Employment Security*, 295 N.W. 412 (Minn. 1940).

impose additional or different eligibility conditions upon such a claimant which, if applicable to the class of interstate claimants "in the same place and under like circumstances," do not violate the Fourteenth Amendment. As already indicated, the legislature may make discriminations if founded on distinctions that are not unreasonable or purely arbitrary, and absence from the jurisdiction of the person or thing dealt with by legislation has been held to provide a reasonable basis for classification.⁶⁶

Finally, it may be pointed out that the statute authorizing the Interstate Arrangement would find support in the general rule that every presumption should be indulged in favor of the constitutionality of particular legislation,⁶⁷ and the burden is upon one claiming the contrary to show clearly and beyond reasonable dispute that its provisions are repugnant to the Constitution.⁶⁸ It is indeed doubtful that a claimant attacking the statute could sustain this burden.

⁶⁶ *Hammond Packing Co. v. Arkansas*, 212 U.S. 322 (1909); *Madden v. Kentucky*, 309 U.S. 83 (1940); *Central Loan & Trust Co. v. Campbell*, 173 U.S. 84 (1899); *Field v. Barber Asphalt Co.*, 194 U.S. 618 (1904); *Douglas v. N. Y., N. H. & H. R. Co.*, 279 U.S. 377 (1929).

In the *Hammond Packing Co.* case, a statute which established a procedure for the examination of books and papers outside the State in the course of litigation was sustained and the Court said (page 349): "The contention that because § 8 applies only to books and papers outside of the State, therefore it denies the equal protection of the laws is not open, since it has been conclusively settled that, without denying the equal protection of the laws, relations may be based upon the fact that persons or property dealt with are not within the territorial jurisdiction of the regulating authority."

Similarly, in *Madden v. Kentucky*, where the validity of a Kentucky statute, which imposed on its citizens an annual and ad valorem tax on their deposits in banks outside of the State at the rate of 50 cents per hundred dollars while deposits in banks located within the State were taxed at the rate of 10 cents per hundred dollars, was in question, the Supreme Court held that the classification was reasonable and did not deny plaintiff equal protection or due process of law. It was pointed out that the difficulty of collecting a tax on deposits outside the State could justify the classification and that, "the treatment accorded the two kinds of deposits may have resulted from the differences in the difficulties and expenses of tax collection."

⁶⁷ *Home Telephone and Telegraph Co. v. Los Angeles*, 211 U.S. 265 (1908); *Davies Warehouse Co. v. Bowles*, 321 U.S. 144 (1944); *Davis v. Department of Labor and Industries*, 317 U.S. 249 (1942).

⁶⁸ *New Orleans Public Service, Inc. v. City of New Orleans*, 281 U.S. 682 (1930); *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U.S. 580 (1938).